BRIEF DIGEST

AND

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OF

Various Annexations of Foreign Territory made by the United States of America.

PREPARED BY

WILLIAM R. CASTLE

OF THE HAWAIIAN BAR, WHILE HAWAIIAN MINISTER IN WASHINGTON, IN THE YEAR 1895.

PUBLISHED BY THE ANNEXATION CLUB OF HONOLULU, HAWAII.

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DIGEST.

The Various Annexations Made by the United States of America.

It is the purpose in this digest to consider only the matter of the annexation of territory to the United States; how and when it occurred; the methods used to perfect union with the other States, and certain views which arose and were expressed upon the constitutionality of the matter, in Congress and elsewhere.

I.

Louisiana.

In 1803 Robert R. Livingston was in Paris attempting to negotiate for the cession of New Orleans, Florida, etc.; but his efforts were unsuccessful until the First Consul, Napoleon, suddenly decided, for reasons which are not yet definitely known, to dispose of the entire territory, which had just been acquired from Spain by the treaty of San Ildefonso. (II H. Adams' History, p. 42.) It was probably to prevent the occupation by England and consequent loss of all.

At the request of Jefferson, Congress had appropriated two millions of dollars to be used for the purchase of New Orleans and such territory as might be acquired, and Monroe was sent to join Pinckney and Livingston. (II Schouler's U. S. History, 46.)

The Government and many citizens of the United States desired the annexation of the Louisiana and Florida territories, and Jefferson unquestionably depended upon that desire for the ratification of acts which he deemed to be outside of the Constitution. His correspondence with friends and members of his own Cabinet clearly indicate this to be his opinion; but most, if not all, his Cabinet and friends with whom he corresponded held different opinions, and declined to support the President's views.

Napoleon deputed to Marbois the task of selling Louisiana to the representatives of the United States. He wanted 100,000,000 francs, but after some negotiation 80,000,000 was finally settled upon, which amounted to $11,250,000, to be paid to France, and $3,750,000 for the payment by France and Spain of claims of citizens of the United States. A treaty was negotiated and signed by the contracting parties in Paris, and was then referred for ratification to Washington. (II H. Adams' History, p. 45.)

The terms of this treaty are of no special importance for the purpose of this review, except Art. 3, which provides as follows:

"Art. 3. The inhabitants of the ceded territory shall be incorporated "in the Union of the United States, and admitted as soon as possible, "according to the principles of the Federal Constitution, to the enjoy-

" ment of all the rights, advantages, and immunities of citizens of the " United States, and in the meantime they shall be maintained and pro- " tected in the free enjoyment of their liberty, property, and the religion " which they profess."

It should be noted that this clause was inserted in direct opposition to the views of Madison upon the subject, but it was insisted upon by Napoleon. (II H. Adams' History, p. 45.)

Views on the Constitutionality of the Question.

The strong popular desire for the acquisition of this territory, and the great and overwhelming joy at the successful and satisfactory negotiations, may perhaps have had something to do with burying forever the views of strict construction which were held by Jefferson and many others, chiefly Federalists, at that time. Most of the statesmen in the New England States were fearful of the everwhelming influence which would be obtained by the southern and southwestern portion of the country, and very strongly opposed the ratification of the treaty on the ground of its unconstitutionality. In the Cabinet, Attorney-General Lincoln expressed grave doubts (II H. Adams' History, p. 78), but these doubts and the whole subject were ably treated by Gallatin in his letter to Jefferson. It was the opinion of some statesmen that separate States could acquire territory. Touching upon this, Gallatin says: " If the acquisition of terri- " tory is not warranted by the Constitution, it is not more legal to acquire " for one State than for the United States. What could, on this construc- " tion, prevent the President and Senate, by treaty, annexing Cuba to " Massachusetts, or Bengal to Rhode Island, if ever the acquirement of " colonies should become a favorite subject with governments, and colonies " should be acquired? But does any constitutional objection really exist? " To me it would appear (1) that the United States, as a nation, have an " inherent right to acquire territory; (2) that whenever that acquisition is " by treaty, the same constituted authorities in whom the treaty-making " power is vested have a constitutional right to sanction the acquisition." (I Gallatin's Works, 112.)

The contention on the part of Madison, Jefferson, and others of the strict constructionists had been that any act of the United States as a nation had no inherent authority or validity, and must be wholly void (II H. Adams, 79–80), and it was expressly understood and maintained by them that negotiations for the purchase of New Orleans must, in order to ensure their validity, be sanctioned by the States in the form of an amendment to the Constitution. (*Id.*) But, overriding his opinions, Jefferson had already directed his envoy in Paris to make a positive treaty, and to get both New Orleans and Florida. (*Id.* 81.) After what had been done, as if to reconcile his theory and acts, Jefferson prepared and submitted to his Cabinet a long constitutional amendment on the matter. This they courteously received and politely dropped from sight. (*Id.* 83; I Gal. Works, 127; Jefferson MSS., title Amendment to the Constitution.) (See also letter of R. Smith to Jefferson.) Jefferson's attempts to pre serve his position on the Constitution were coldly received by his supporters, and one of the strongest of them, Wilson Carey Nicholas (the author of the Virginia Resolutions), wrote a letter to Jefferson upon the subject, in which he says: " Upon an examination of the Constitution I " find the power as broad as it could well be made (Sec. 3, Art. 4), except " that new States cannot be formed out of the old ones without the con- " sent of the State to be dismembered, and the exception is a proof to " my mind that it was not intended to confine Congress in the admission

" of new States to what was then the territory of the United States. Nor " do I see anything in the Constitution that limits the treaty-making " power, except the general limitation of the other powers given to the " Government, and the evident object for which the Government was in- " stituted." (II H. Adams, 87.)

The treaty for the purchase and the annexation of Louisiana gave a fatal wound to strict construction of the Constitution on that point. (*Id.* 90.) Congress was called in session to act upon the matter, and, in his message, Jefferson, in spite of his opinions on the constitutional question, called upon the "wisdom of Congress * * * to take those measures neces- " sary to occupy and govern the annexed territory, and for its incorpora- " tion into the Union."

Several days of earnest discussion arose upon the constitutionality of the proposed annexation.

Said Griswold of New York: " The framers of the Constitution carried " their ideas to the time when there might be an extended population, but " they did not carry them forward to the time when an addition might be " made to the Union of a territory equal to the whole United States, which " additional territory might overbalance the exisiting territory, and thereby " the rights of the present citizens of the United States be swallowed up " and lost." Proceeding further, he argued that the power to admit new States referred only to territory belonging to the States when the Constitution was framed; but whatever this right might be, it was vested in Congress and in the executive. In promising to admit Louisiana as a State, the President assumed power which could not have been his.

To this John Randolph replied: " The Constitution could not restrict " the country to particular limits, because at the time of its adoption the " boundary was unsettled. The power to settle disputes as to limits was " indispensable. It existed in the Constitution, had been exercised, and " involved the power of extending boundaries." He asserted that the right to annex Louisiana, Texas and Mexico, South America if need be, was involved in the right to run a doubtful boundary line, and if this power existed in the Government it devolved on the executive to deal with foreign States.

Roger Griswold of Connecticut made an able presentation of the matter. But his argument is tinged throughout with a desire to save the balance of power to the New England States. He could not deny that the Constitution gave power to acquire territory. He agreed with Gouverneur Morris, who said he knew in 1788 as well as in 1803 that all North America must at length be annexed. He said further that new territory and new subjects may undoubtedly be acquired by conquest and by purchase, but assumed that neither conquest nor purchase can incorporate them into the Union. They must remain in the condition of colonies and be governed accordingly; and he contended that a treaty which pledged the nation to admit the people of Louisiana into the Union must be invalid, because it assumed that the President and Senate may admit at will any foreign power.

His argument was listened to with respect, and had great weight, but was not convincing, and in the discussion which arose both Rodney and Nicholson presented the authority contained in the treaty-making power in the strongest light. Both agreed that the principle was correct, that the nation had the right to acquire new territory, and added that the right contended for must exist somewhere, being essential to independent sovereignty, and, as such power was prohibited to the States, it was necessarily vested in the United States. Rodney argued upon the "general

welfare" clause, holding that it included the power of increasing the territory of the United States, and as necessary and proper for the common defence, both of which were regarded by strict constructionists as the most dangerous instruments of centralization.

At the end of the day's debate 90 Republicans supported Randolph's views, and 25 Federalists alone protested.

November 2, 1803, the debate was resumed in the Senate. Senator Pickering clearly and definitely affirmed the right of acquisition by purchase, which must carry with it the right to govern the acquired provinces. But he asserted that neither the President nor Congress could incorporate the acquired territory into the Union. He went to the extent of arguing that each State must first consent before any such territory could be admitted to the Union of States.

Col. Taylor, while agreeing that the United States had the right to acquire new territory, referred that right to the war and treaty powers. When it came to the question of admission of acquired territory to the Union, he assumed that Louisiana must be governed by the inherent powers of the Government, leaving it vague as to what his opinion might be upon the right of the President to incorporate the 3d Article in the treaty.

Tracy, of Connecticut, replied to Taylor in a speech which is considered the best presentation on his side. It was on party grounds. He did not doubt the right and power to obtain territory, either by conquest or compact, and hold it, "even all Louisiana and a few times more, if you please, "without violating the Constitution," but he denied the right to admit the inhabitants into the Union; to make citizens of them; and he asserted in the strongest light the principle that if subsequently admitted as a State or States, the prior consent of all the other States must first be obtained, and he concluded by saying that to so admit Louisiana would be absorbing the Northern States and rendering them insignificant in the Union.

Breckinridge, of Kentucky, replied and pointed out that if the Federalist argument, so strongly presented by Tracy and others, was carried out, it would result in centralization further than it was carried by the treaty. The acquired territory, if held simply as a property of the United States, might be used as a most dangerous engine in the hands of the Government against the States and the people. And he further argued that the admission by treaty of a foreign State was therefore less dangerous, and therefore more constitutional, than the bare ownership of such territory.

John Quincy Adams, of Massachusetts, then a young man, believed that an amendment to the Constitution should be proposed to the States authorizing the admission of Louisiana, and he believed it would be adopted by every State. But he could not deny the authority of the General Government to acquire territory.

Wilson Carey Nicholas closed the debate, reiterating the opinions expressed in his letter to Jefferson, but was somewhat evasive of the points at issue. The treaty-making power, while indefinite, was not unlimited. The general limitations of the Constitution applied to it, not special limitations of power, and the treaty must be judged by its conformity with the general meaning of the compact. The 3d Article of the treaty must be considered as an engagement to incorporate the territory of Louisiana i. to the Union and eventually to make it a State. But such agreement did not make a State of Louisiana, and therefore was not an unconstitutional exercise of the treaty-making power. The final incor-

poration must be done according to the principles of the Constitution, and the States might or might not do it at their discretion.

The result of the discussions on the treaty, in both Senate and House, decided but one point, and this was the right of the United States Government to acquire new territory, either by conquest or purchase. The difference of opinion was as to the status of the newly acquired territory. Did it belong to the General Government or to the States? But it was of no great importance whether Louisiana could be held as a colony or to be admitted as a State, if the cession and authority of the Government to acquire the territory was conceded. This point was forever settled.

Statutes.

The first was passed upon the 31st of October, 1803, and is entitled "An act to enable the President of the United States to take possession " of the territories ceded by France to the United States by the treaty, " etc., and for the temporary government thereof."

By Sec. 1 the President of the United States is authorized to take possession of and occupy the territory ceded by France to the United States by the treaty of April 30, 1803. He was also duly authorized for that purpose to employ any part of the army and navy of the United States, for which purpose he was to use funds voted for general military purposes.

By Sec. 2 it was provided "That until the expiration of the present " session of Congress, unless provision for the temporary government of " the said territories be sooner made by Congress, all the military, civil, " and judicial powers exercised by the officers of the existing government " of the same shall be vested in such person and persons and shall be " exercised in such manner as the President of the United States shall " direct for maintaining and protecting the inhabitants of Louisiana in " the enjoyment of their liberty, property, and religion." (II U. S. Stats. at Large, 245.)

Upon the 24th of February, 1804, Congress passed a further act to extend to the territory, purchased of France by the treaty, certain laws of the United States, naming such acts; first covering the acts regarding the levying of duties, after which follows a series of laws relative to the Treasury Department, the registration of ships, licensing of fishing vessels, compensation of officers, authorizing the sale of lands by marshals, establishment of mint regulations, etc. This act also provided for certain provisions and exceptions in the general working of some of the laws, which were necessary in view of the nature of the territory annexed. (2 U. S. Stats. at Large, 251).

About the 25th of February, 1804, an act was also passed extending to vessels in the Louisiana trade, sailing under French or Spanish registers, the right to register under the laws of the United States, and extending to them the protection of such laws. (*Id.* 259.)

March 25, 1804, an act was approved dividing Louisiana into two territories and providing for a territorial government.

Sec. 1 provides that the lower portion of the territory should be called Orleans. Sec. 2, there shall be a governor to reside in said territory and hold office for three years, unless sooner removed by the President, and giving to him certain powers necessary to the government of the territory. Sec. 3 provides him with a secretary. Sec. 4 creates a legislative power for the territory, vesting the same in a governor and in "thirteen " of the most fit and discreet persons of the territory, to be called the Leg- " islative Council," appointed by the President from among the holders of

real estate. Certain restrictions were placed upon the powers of this body. Sec. 5 provides for a judicial power, which should be vested in the superior courts and in such inferior courts and justices as the local legislature might from time to time provide and establish. The remainder of the section provides for the powers and duties of the judges.

Sec. 6 provides for the method of appointment of governor, secretary, judges, etc., by the President of the United States; also for salaries.

Sec. 7 extends certain criminal laws and other acts of the United States to the two territories.

Sec. 8 provides for the establishment of a United States court in the territory and for a prosecuting attorney.

Sec. 9 provides for the establishment of a grand jury from the inhabitants of the territory.

Sec. 10 prohibits the importation of slaves; providing also penalties for the violation of such provision.

Sec. 11 is as follows: "The laws in force in the said territory at the "commencement of this act, and not inconsistent with the provisions "thereof, shall continue in force until altered, modified, or repealed by "the local legislature."

Sec. 12 provides that the remainder of the province ceded by France to the United States shall be called the District of Louisiana, and thereupon proceeds to create the said government for such territory by extending to the same the executive power vested in the government of the Indiana Territory.

Sec. 13 provides that the laws in force in the District of Louisiana, etc. shall continue until altered, modfied, or repealed by the judges of the Indiana Territory. The remainder of the act is taken up with previous pretended Spanish grants and other claims in the territory. Also providing for settlements with Indian tribes. (*Id.* 283.)

Upon the 2d of March, 1805, a further act was passed "providing for "the government of the Territory of Orleans," which provides:

Sec. 1, that the President of the United States is authorized to establish in the Territory of Orleans a government in all respects similar (except as otherwise provided) to that exercised in the Mississippi Territory in general conformity with the ordinance of Congress made July 13, 1787.

Sec. 2 provides for the election of members of a general assembly, for the division of the territory into districts for an election, etc.

Sec. 3 provides for a meeting of the legislature so chosen, and that there should be meetings each year.

Sec. 4 continued in force all laws not inconsistent with the terms of this act.

Sec. 5 prescribes that the ordinance of 1787 regulating the descent and distribution of estates should not extend to the Territory of Orleans.

Sec. 6 provides for compensation of officers to be paid out of revenues of the Territory derived from imposts and tonnage.

Sec. 7 provides that whenever the population of the Territory, upon a proper census, should amount to 60,000, they should then be authorized to form a constitution and State government upon the footing of the original States, for the purpose of conforming to the provisions of the 3d art. of the treaty of April 3, 1803; but such constitution should be republican and not inconsistent with the Constitution of the United States. (*Id.* 324.)

On the 3d of March, 1805, an act was passed to provide a territorial government for the Territory of Louisiana, which is noteworthy in that

it invests the executive power in a governor, and the legislative power (sec. 3) in said governor and three judges. Jury trial is by said act also extended to the Territory. (*Id.* 331.)

February 28, 1806, an act was passed extending the powers of surveyor-general to all public lands in the Territory of Louisiana in which Indian titles had been or should thereafter be extinguished. (*Id.* 352.)

April 21, 1806, further act was passed relative to public lands in Louisiana, making particular and minute regulations relative to the same. (*Id.* 391.)

ADMISSION OF LOUISIANA TO STATEHOOD.

February 20, 1811, an act was passed to enable the people of the Territory of Orleans to form a constitution and State government, and for admission of said State into the Union, etc.

Sec. 1 prescribe the limits of such proposed State.

Sec. 2 provides that all free white male citizens of the United States of the age of twenty-one years, residing in the Territory at least a year, who shall have paid certain prescribed taxes, etc., should be entitled to vote for representatives to a constitutional convention.

Sec. 3 provides the place of meeting; that the constitution to be formed should be republican and consistent with the Constitution of the United States. It also prescribes certain clauses and principles which must be contained in the said constitution, and also that the same should disclaim the right to all public lands in the State, with other clauses.

Sec. 4 provides that, after the adoption of such constitution, the same shall be transmitted to Congress, and, if not disapproved by it, that at the next session, after the receipt thereof, said State shall be admitted into the Union. (II U. S. Stat at Large, 641.)

April 2, 1812, Congress passed an act "For the admission of the State "of Louisiana into the Union, and to extend the laws of the United "States to said State." The preamble recited the cession of Louisiana by the treaty of April 20, 1803, the bounds of the State, the adoption of a republican constitution, the transmission of the same to Congress, and its approval; and then Sec. 1 declares that said State is admitted into the Union on equal footing with the original States in all respects whatsoever, by the name and title of Louisiana, with the freedom of the Mississippi. The act then proceeds to state how the laws of the United States shall be applied to the new State, makes it a judicial district, gives it one representative until further apportionment, and makes other provisions. (*Id.* 701.)

The act of April 14, 1812, simply enlarges the limits of the State.

II.

FLORIDA.

With some fluctuations in ownership, extent of territory and government, Florida at the beginning of the century belonged to Spain; but the United States, very soon after the Revolution, looked with longing eyes at the territory, and desired to have it annexed to the United States. In the disturbed conditions in Europe it seemed uncertain as to where the territory would finally go, and during the first decade of the century extreme solicitude was felt on the part of the Government of the United States as to what might become of it, and an act was passed January 15, 1811, authorizing the President, under certain contingencies, to take possession of the country south of Georgia and Mississippi. (II U. S. Stat. at L. 471–2.)

January 15th, same year, a resolution was adopted in Congress, that in view of the peculiar situation of Spain and her American provinces, and the importance to the United States of the countries upon her south border, it could not look "without serious inquietude and see any portion of the territory fall into possession of a foreign power, and that due regard to the safety of the United States might require its temporary occupation subject to further negotiations." (U. S. Stat. at Large, 666, and III *id.* 471.)

What the United States so earnestly desired with regard to the territory of Florida was acquired by the treaty of 1819, which was concluded in February following. The ratifications were finally exchanged February 22, 1821. The treaty is entitled "Treaty of amity, settlement, and limits." The preamble recites the determination and desire on the part of the two governments to consolidate on the permanent basis of friendship and good understanding.

In Art. 2 his Catholic Majesty cedes to the United States all territories which belong to him situated east of the Mississippi, known by the name of East and West Florida, the adjacent islands dependent on said provinces, all public lots, squares, fortifications, etc., not private property, and all archives and public documents relating directly to the property and sovereignty of the provinces, which were to be left in the hands of the commissioners of the United States duly authorized.

Art. 3 concludes a new boundary between Spanish and American possessions west of the Mississippi, beginning on the Gulf of Mexico at the mouth of the Sabine, thence running on the bank of that river to the thirty-second degree of north latitude, and so on, covering much of the territory now included in the Indian Territory, part of Kansas and Colorada to the 42nd parallel of north latitude; thence on said parallel to the "South Sea," all of the islands on the Sabine, Red, and Arkansas rivers were given to the United States.

Art. 5 secures to the inhabitants of the ceded territories the free exercise of their religion, etc.

Art. 6 is as nearly as may be a copy of Art. III of the French treaty ceding Louisiana, and reads as follows:

"The inhabitants of the territories which his Catholic Majesty cedes to "the United States by this treaty shall be incorporated in the Union of "the United States as soon as may be consistent with the principles of the "Federal Constitution, and admitted to the enjoyment of all the privileges, "rights, and immunities of the citizens of the United States."

Art. 8 confirms certain Spanish grants of lands, but expressly nullifies any such grants made subsequent to the 24th of January, 1818, when the first proposition to cede the territory was made by the King of Spain.

Art. 9 renounces certain claims by citizens of the United States and of Spain against the opposite respective governments.

Art. 11 provides for satisfaction by the United States of certain claims of its citizens to the extent of $5,000,000. (VIII U. S. St. at L 254.)

The action of Spain was undoubtedly precipitated by the action of General Andrew Jackson, who, upon the pretext of pursuing to their lairs the Indians, took possession of nearly all of northern Florida in 1818.

March 3, 1819, "An act to authorize the President of the United States "to take possession of East and West Florida and establish a temporary "government therein" was passed, which authorized the President to take possession of East and West Florida and all appurtenances, and to remove therefrom the officers and soldiers of Spain in accordance with the terms of treaty providing for the cession of said territory, executed

the 22d of February, 1819; and the President was authorized to use the forces of the United States for that purpose, and to maintain the authority of the United States laws therein.

The act also provided for extending to Florida the laws of the United States, and also that unless Congress provide for the temporary government of the territory, all of the civil, military, and judicial powers exercised by officers of the existing government of said territory shall be vested in such persons and be exercised in such manner as the President of the United States shall direct for maintaining the free enjoyment of religion, liberty, and property by the inhabitants of such territory.

Sec. 4 provides that the act should take effect and be in force whenever the said treaty should have been ratified by the King of Spain and he should be ready to surrender said territory to the United States. (III Stat. at L. 523.)

Although the treaty had been duly signed by the plenipotentiaries in Washington, the King of Spain constantly deferred and delayed the ratification of the treaty until there was serious danger of a rupture between the two governments, but upon the protestation of the emissaries of the United States at times in Madrid, and at times to the Spanish emissary in Washington, such ratification was finally given, and in 1821, March 3d, an act was passed by Congress for carrying into execution said treaty, referring back to the law of 1819.

By it the President was authorized to take possession of and occupy the territories of East and West Florida, and to exercise the powers named in said act, extending also to Florida the laws of the United States, with certain modifications required by the treaty of cession. (III *id.* 637.)

Still there was delay in transferring the territory to the United States by Spain. An act had been passed reducing the military establishment, which had the effect of throwing out General Jackson. He was thereupon appointed governor of the new territory under the large but vague powers given to the President by the act of Congress. He received several commissions for various purposes, and to act as governor and to carry the treaty into full effect. Possession was finally taken in East Florida on the 10th of July, and by General Jackson personally at Pensacola, in West Florida, upon the 17th of the same month. There was some difficulty in getting possession of the archives, but by the summary arrest of the Spanish governor, Jackson procured all the necessary papers.

In 1822, March 30th, an act was passed to establish a Territorial government in Florida. By it East and West Florida were united into one Territory, to be called Florida.

Sec. 2 provides that the executive power shall be vested in a governor, to hold office for three years, unless removed.

Sec. 3 provides for a secretary of the Territory, with certain powers.

Sec. 4, that in case of the absence of the governor, the secretary should perform his duties.

Sec. 5 vested the legislative power in a governor and in thirteen fit and discreet persons of the Territory, to be called the legislative council, to be appointed by the President of the United States. They might enact such laws and regulations for the government of the Territory as should not be inconsistent with the Constitution and laws of the United States, and amend and modify existing law. Sessions were provided for each year, to be not longer than two months.

Sec. 6 provides for the judicial power, to consist of two superior courts, and such inferior courts as the legislature should appoint.

Sec. 7, for the jurisdiction of courts.

Sec. 8, for the appointment of Territorial officers by the President, by and with the advice and consent of the Senate.

Sec. 9 extends to the Territory the provisions of certain acts of the United States.

Sec. 13, that the laws of the Territory not inconsistent with the provisions of this act shall continue to be in full force and effect until duly modified and repealed.

Sec. 14 entitles the Territory to one delegate in Congress. (III U. S. Stat. at L. 654.)

May 7, 1822, an act was passed to relieve the people of Florida from the obligation of certain ordinances, imposed by Jackson while governor of the Territory, with reference to naturalization. (*Id.* 685.)

March 3, 1823, an act was passed amending the law of 1822 preparing for a Territorial government, making some alterations in the form (*id.* 750), and, at the same time, an act was passed relative to settlement of claims and titles to land in the Territory. (*Id.* 754.)

May 15, 1826, another act was passed amending the law for Territorial government with regard to the courts, jurisdiction, form of procedure, etc.; also to provide more specifically for the election of the Territorial council having legislative authority. (IV U. S. Stat. at L. 164.)

During this time many acts were passed by Congress modifying or annulling acts of the Territorial legislature, and supervising lands, etc., in the Territory, which are to be found chiefly in Vol. IV of the U. S. Statutes, and which are interesting as showing the extent to which Congress may interfere in Territorial government.

Owing to troubles with the Indians, and the swampy, isolated character of the Territory, the population increased but slowly, and many years elapsed before Florida was finally admitted as a State.

Further laws were enacted March 3, 1845, to carry into full effect the law of admission, to apply to all parts of the State the laws of the United States, and provide for certain U. S. officers, etc. (V U. S. Stat. at L. 788–9.)

Admission of Florida to Statehood.

Upon the 3d of March, 1845, an act was passed for the admission of both Florida and Iowa into the Union. The preamble recites the enactment of a State constitution by each; that the same were found to be duly republican, and the several requests for admission into the Union; and Sec. 1 thereupon declares that the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America.

Sec. 5 describes the State of Florida as embracing the territories of East and West Florida, duly ceded to the United States by the above treaty.

Sec. 6 provides that each of said States shall have one representative in Congress.

Sec. 7 provides that neither shall interfere with the primary disposal of public lands, nor levy taxes thereupon. (V U. S. Stat. at L. 742.)

Judicial Decisions on Annexation.

The legislative and executive departments of the United States Government having by their action unquestionably held that the annexation of foreign territory was within the constitutional powers of the Government, it only remained for the judicial branch to pass upon the subject. This was clearly done in the case of the American Insurance Company *et al. v.* David Canter, claimant, reported in 1 Peters, 511. (See also a digest reviewing the cases in "Thayer's cases on Constitu-

"tional Law," part 1, p. 350.) The opinion of the court in Canter's case was delivered by the great Chief Justice Marshall. The proceeding arose under acts passed by the Territorial legislature of Florida, and "was taken to the Supreme Court upon the direct question of the con- "stitutionality of these acts, which involved the constitutionality of the "annexation of that territory." The court says, * * * "If it be ceded "by the treaty * * * the ceded territory becomes a part of the nation "to which it is annexed, either on terms stipulated in the treaty of cession, "or on such as its new master shall impose. On such transfer of territory "it has never been held that the relations of the inhabitants with each "other undergo any change." * * * The court then proceeds to review the sixth article of the treaty of the 2d of February, 1819, with regard to the inhabitants of the territory,—their being incorporated into the Union, etc.; and it goes on to say: "This treaty is the law of the land and "admits the inhabitants of Florida to the enjoyment of the privileges, "rights, and immunities of the citizens of the United States. It is un- "necessary to inquire whether this is not their condition independent of "stipulation. They do not, however, participate in political power; they "do not share in the Government until Florida shall have become a State. "In the meantime Florida continues to be a territory of the United States, "governed by virtue of that clause in the Constitution which empowers "Congress to make all needful rules and regulations respecting the terri- "tory or other property belonging to the United States."[1]

The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the course where the power is derived, the possession of it is unquestioned.[2]

This decision clearly indicates the opinion of the Supreme Court upon the question of constitutionality, and it has been amply sustained by subsequent decisions.

III.

Texas.

The case of Texas presents still another instance of the annexation of a foreign territory to the United States. But it differs from the cases of Louisiana and Florida in the important fact that Texas was a unit, an entire country, which desired annexation to the United States, in which the inhabitants controlled the destinies of the State. It is true that claims were made to the territory as forming part of the Louisiana cession; but if any such claim had an existence in fact, it was set at rest by the treaty of cession of Florida, which definitely fixed the boundaries of the United States at the Sabine river, thereby admitting, without question, the right of Spain to the entire Texas territory. (III Schouler, 96 U. S. Hist.)

In some respects the case of Texas is not unlike that of the Hawaiian Islands, with regard to its settlement and civilization; for Americans emigrated thence, and became the dominant and powerful portion of the population, forming the State and controlling its fate. The republic was established in October, 1836, and in less than a year an application was made for annexation to the United States, which was then declined. The Northern States looked at it as an attempt to spread the slave power.

It does not concern this digest to go into the matter of how Texas obtained her independence from Mexico, or to review the causes of the Mexican war, but it is a part of the history of the country that Mexico

[1] See also Fleming *v.* Page, 9 How. 614; Scott *v.* Sanford, 19 How. 393; Mormon Church *v.* U. S., 136 U. S. 42.

[2] See Am. Ins. Co. *v.* Canter, 1 Pet. 542; Cross *v.* Harrison, 16 How. 164; Nat. Bank *v.* Yankton, 101 U. S. 129; Mormon Church *v.* U. S. 136 U. S. 42; Jones *v.* U. S., 137 U. S. 202; Railway *v.* McGlinn, 114 U. S. 546.

had not admitted the independence of Texas as an autonomous government when this war broke out. Indeed, it was caused largely by the conduct of the United States authorities and the Texans regarding annexation to the United States. (IV Schouler's U. S. Hist. 247, 250–554; VIII H. H. Bancroft, Chap. 7, Debates of Congress, 1836. See also IV Schouler, U. S. Hist. 444–50.)

In the discussions in Congress which arose over the question of annexation, it is noteworthy that the Whigs argued that it was unconstitutional for Congress to annex a foreign republic, but after the precedents of Louisiana and Florida it was held that such a scruple had no weight, and the constitutional right to annex foreign territory was conceded as a thoroughly established precedent of the country. The real objection, which was not named, was the unavoidable extension of the slave power by such annexation. (IV Schouler, U. S. Hist. 482.) Seward voiced that sentiment and predicted the nullification and disunion which must inevitably follow. (Seward's Life, p. 727.)

A treaty of annexation was entered into between the two governments, but it failed of ratification in the U. S. Senate, not getting the requisite two-thirds majority. But it is a matter of history that its defeat arose, not upon any question of authority or of unconstitutionality, but on account of the slave question.

In his annual message to Congress in December, 1844, President Tyler argued that Texas should be annexed to the American Union at once.

He referred to the fact that a proposed treaty of annexation had been negatived, and therefore suggested that a resolution should be passed by Congress for the purpose of accomplishing that which had not been obtained by treaty. It appears by reference to the Congressional Globe of December, 1843, p. 652, that the vote stood 16 for ratification with 35 against.

The treaty is not published nor the proceedings in executive session, but on June 10, 1844, Mr. Benton, in his motion for leave to introduce a bill for the annexation of Texas, spoke of the treaty now being out of the way; that he should ask leave to introduce a bill for that purpose, claiming that only Congress had a right to annex territory and not the President. He claimed that, by the Constitution, Congress alone could admit States. His speech is interesting as setting forth the course of proceedings had with regard to Florida. The proposed bill, which did not finally pass, proposed (1) to authorize the President to open negotiations with Mexico and Texas, with the former because that it had not recognized the independence of Texas, although the war with Texas was practically over; (2) to get the consent of the people of Texas by a vote to be taken for that purpose. The 6th section of the bill provided for obtaining the assent of the Republic of Mexico, but upon the 13th of June of that year the bill was tabled by a vote of 25 to 20. (See Congressional Globe, p 674.) The debates upon this bill, taken with the provisions of the proposed measure, are interesting and of some value as showing that even at that date Congress did not regard it as necessary to take a vote of the people of the country proposed to be annexed, and the joint resolution which was finally adopted in 1845 made no provision for any such referendum.

Without entering into the various conventions and communications between the United States and Texan authorities, the act which finally brought about the annexation of Texas was the passage by the United States Congress, after considerable discussion and some amendment, of a joint resolution upon the 25th of February, 1845, which was signed by

President Tyler upon the 1st day of March that year—it being practically his last act before retiring. Its main points are as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That Congress doth consent that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of the Union.

"*And be it further Resolved*, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit:

"*First*. Said State to be formed subject to the adjustment by this Government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action on or before the 1st day of January, 1846.

"*Second*. Said State when admitted into the Union after ceding to the United States the public edifices * * * ports and harbors * * * and all other property * * * belonging to said Republic of Texas; shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities to be disposed of as said State may direct. But in no event are said debts and liabilities to become a charge upon the Government of the United States.

"*Third*. New States of convenient size, not exceeding four in number, in addition to the said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Conititution * * * (Referring to the slavery question.) * * *

"*And be it further Resolved*, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture upon the part of the United States for admission, to negotiate with that republic; then,

"*Be it Resolved*, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with existing States, as soon as the terms and conditions of such admission and the cession of the remaining Texan territory to the United States shall be agreed upon by the governments of Texas and the United States * * * (appropriation for expenses) * * * to agree upon the terms of said admission and cession, either by treaty, to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct." (V U. S. Stat. at L. 797.)

In the discussion which arose upon the resolution, it was contended that there was but one course by which annexation could be procured—that of a treaty; but it was admitted that a joint resolution authorizing the admission of Texas as a State was within the powers of Congress,

and that whatever may have been the doubt prior to that time, the right of Congress to do so was clearly established.

It is very probable that the form of a joint resolution was taken to authorize the annexation of Texas, as its passage through either house of Congress required only a majority, and not two-thirds. In the Senate the vote stood 27 to 25, while in the House it stood 120 to 98, 112 of the majority being Democrats; and a like proportion of the majority is true in regard to the Senate vote (4 Schuyler, 483–4, and 67 Miles' Debates of Congress, 350).

(An interesting account of events that led up to the annexation of Texas and the Mexican war may be found in the 1st chapter of the History of the Mexican War by General C. M. Wilcox.)

In Texas the legislature met upon the 16th of June, and considered the matter of annexation. Two offers confronted the republic—from Mexico a treaty of peace on terms of separate independence, it being insisted upon that there should be no annexation to the United States; from the United States the proposition of annexation under and in accordance with the terms of the joint resolution. The Mexican offer was unanimously rejected, while that of the United States was unanimously accepted. Three months later a constitution to accord with the requirements of the joint resolution of the United States was submitted to the people, and was adopted by a very large majority, showing clearly the sentiment in Texas. (4 Schuyler, U. S. Hist. 520.)

Shortly after, this constitution, having been submitted to the Congress of the United States, which began its session early in December, 1845, was approved by the said Congress, and on the 29th of December a joint resolution for the admission of the State of Texas into the Union was adopted. The preamble of the resolution declares that "Whereas the "Congress of the United States, by a joint resolution approved March 1, "1845, did consent that the territory properly included within and right- "fully belonging to the Republic of Texas might be erected into a new "State, to be called the State of Texas," etc. (recites the adoption of the constitution, its transmission to the President, and approval); therefore it was *resolved:*

Sec. 1. "That the State of Texas shall be one, and is hereby declared "to be one, of the United States of America, and admitted into the Union "on an equal footing with the original States in all respects whatever."

Sec. 2. Admits two representatives for the State in Congress. (IX U. S. Stat. at L. 108.)

Upon the same day the President approved "An act to extend the "laws of the United States over the State of Texas, and for other pur- "poses."

Sec. 1 declared: "That all the laws of the United States are hereby "declared to extend to and over, and to have full force and effect within, "the State of Texas, admitted at the present session of Congress into "the Confederacy and Union of the United States."

Sec. 2 constitutes Texas a judicial district, and provides for terms of court, jurisdiction, etc. (*Id.* 1.)

Another act, approved 31st of December, '45, erects the State of Texas into a collection district, names a port of entry, provides for a collector, surveyors, etc. (*Id.* 2.)

Appropriate legislation thereafter from time to time applied the various laws of the United States to Texas for the purpose of making it in all respects an integral part of the Union, and subject to all the laws and regulations of the country. It is not necessary to quote at length the

subsequent proceedings between the United States and Texas, which are noted in various acts of Congress, except to say that whereas it was provided in the first instance that Texas should pay its own debt, it was afterwards practically paid by the United States Government by the issue of $10,000,000 in bonds of the United States to Texas, upon the settlement of the claims of said State to territory now covered by New Mexico and Arizona. (IX U. S. Stat. at L. 446.) The act making such provision also establishes the Territory of New Mexico. See also proclamation of the President respecting boundaries. (IX *id.* 1005.)

The action of the United States and Texas with regard to annexation naturally provoked the Mexican people and brought about the war; although the immediate cause thereof was the occupation by the United States troops of the territory south and west of the Neuces river, which Mexico claimed to be the proper boundary of Texas, while the Texans, supported by the United States Government, claimed the Rio Grande. The war was ended by the treaty concluded May 30, 1848, which was duly proclaimed the 4th of July following.

In Article 6 of the treaty a division line is provided for between Mexico and the United States; and in Article 12 the United States "agrees to "pay to Mexico the sum of $15,000,000 for the extension of the boundaries of the United States;" also agreed to pay certain claims of American citizens against Mexico. (IX U. S. Stat. at L. 922.)

This treaty, which was duly ratified, as required by the Constitution of the United States, is still another admission of the right of the United States to acquire foreign territory, for by it a very large addition was made to the limits of the country, covering many hundred thousands of square miles, extending on the Pacific coast from the confines of Lower California to the 42d parallel of north latitude, thence to the source of the Arkansas river in the Rocky Mountains.

IV.

Alaska.

After the close of the civil war secret negotiations were entered into between Russia and the United States for the purchase and cession of the territory called Russian America or Alaska, and upon the 30th of March, 1867, a treaty of purchase and cession was concluded, which was ratified and proclaimed at Washington upon the 20th of June following. This treaty will be found on p. 939 in the volume of the United States Treaties and Conventions. The proclamation thereof by the President of the United States appears upon p. 539, Vol. 15, U. S. Stat. at Large.

Article I contains an agreement on the part of Russia to cede to the United States all Russian territory upon the continent of America and adjacent islands; thereupon setting forth the geographic limits.

Article II makes an express conveyance of public lands, fortifications, etc., and agrees that all documents and archives relative thereto shall be delivered to the United States authorities.

Article III provides that such inhabitants of the ceded territory as desire might return to Russia within three years, reserving their Russian allegiance, but that "if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be "admitted to the enjoyment of all the rights, advantages, and immunities "of citizens of the United States, and shall be maintained and protected "in the free enjoyment of their liberty, property, and religion. The uncivilized tribes shall be subject to such laws and regulations as the United

" States may from time to time adopt in regard to aboriginal tribes of " that country."

Article IV provides for the appointment of agents on the part of each Government to proceed to Alaska for the purpose of transferring the possession, etc.

Article VI provides for the payment by the United States to Russia of $7,200,000, as the price of the ceded territory.

There were only two votes against ratification, 37 voting in the affirmative.

For the proceedings upon the ratification of the treaty annexing Alaska, see 15 Executive Journal (1867), p. 675–6.

NOTE.

The decision of Congress in 1803 on the acquisition of Louisiana, which forever settled the constitutional authority of the United States as a Government to acquire foreign territory, only followed in the footsteps of the statesmen of 1787, who accepted the cession of the Northwest Territory, for the Articles of Confederation were silent upon the subject, as was the subsequently adopted Constitution. The principle was established, and must forever remain a part of the American system, that, although not in terms delegated, the power of such acquisition impliedly belonged to the sovereign.

This implied power covers the authority to deal with the general territory of the United States; not only to acquire, but to cede. By treaties in 1842 Great Britain received a portion of Maine, and in 1846 a vast territory in the Northwest and on the shores of the Pacific. (See Miller on the Constitution, pp. 128–131.)

The authority of the United States to acquire foreign territory was again affirmed by the Supreme Court in the recent case of Mormon Church *v.* U. S., 136 U. S. 1.

At page 42 the court says:

"The power to acquire territory * * * is derived from the treaty-" making power and the power to carry on war. The incidents of these " powers are those of national sovereignty, and belong to all independent " governments. The power to make acquisitions of territory by conquest, " by treaty, and by cession is an incident of national sovereignty. * * * " The acquired territory becomes subject to such conditions as the Gov-" ernment in its different negotiations had seen fit to accept in relation " to the rights of the people then inhabiting those territories."

The opinion then goes on relative to powers of the United States in governing the territory, and in the dissenting opinion in those cases delivered by Chief Justice Fuller it is said:

"Doubtless territory may be acquired by the direct action of Congress, " as in the annexation of Texas; by treaty, as in the annexation of Lou-" isiana, or, as in the case of California, by conquest, and afterwards by " treaty; but the power to legislate over territories is granted in so many " words by the Constitution."

Sections 5570–'8, U. S. Rev. Statutes, give authority to the President of the United States to declare that guano islands and similar property, wherever the same may be, shall under certain circumstances appertain to the United States.

Jones *v.* United States, 137 U. S. 202, holds this statute to be constitutional, and that the action of the President fixes the status of such islands, although detached from the continent. This was decided by the case, although the particular point at issue appears to have been the constitutionality of the statute extending the criminal jurisdiction of the United States to such detached possessions.